



Appendix J

Compensation of Full-Time FLSA-Exempt Personnel For State Fire Mobilization Assignments 2005 Mobilization Plan

Purpose

There have been recurring questions regarding the means for compensating full-time FLSA-exempt personnel for state fire mobilization assignments. The underlying question is: Can exempt personnel be granted extra compensation without compromising their exempt status? These guidelines answer that question and provide policy and procedure examples.

(See Forms – Appendix M for examples)

Fair Labor Standards Act

The federal Fair Labor Standards Act establishes the standards and requirements for employee compensation. Employees who meet minimum prescribed standards of responsibility and are paid a salary (as opposed to an hourly wage rate) are classified as “exempt” from FLSA compensation rules. The FLSA “test” for determining exempt status is beyond the scope of these guidelines.

The primary thrust of the FLSA regulations for exempt status addresses the loss of that status when an employee is subject to deductions from pay, not additions to pay.

The regulation specifically allows for additional compensation, and consistent letter rulings state that such additional compensation may be made on any basis.

Many public employers who otherwise pay exempt employees on a salary basis also have some form of overtime compensation that may be in the form of additional pay (often at a straight time rate) or compensatory time.

Regulations

The regulations include a specific allowance for additional compensation besides salary: Minimum guarantee plus extras. It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee’s compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. 29 CFR Section 541.118(b).

Another regulation that is notable applies to overtime payments: Section 7(p)(2) of the FLSA provides that where state or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability. 29 CFR Section 553.30(a).

The important aspect of this regulation is the reference to “occasional or sporadic”, which is further defined in the succeeding subsection:

The term occasional or sporadic means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of public services that is at the time best met by the part-time employment of an individual who is already a public employee. 29 CFR 553.30(b)(1).



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Administrative Letter Rulings: Department of Labor, Wage and Hour Division

Two letter rulings dated April 6, 1995, from Daniel F. Sweeney, Deputy Assistant Administrator, address the point in question.

- (1) Opinion concerning whether a salaried exempt employee can be paid additional compensation for services rendered in excess of 40 hours in a workweek.
- (2) Does the payment of additional compensation to employees who meet both the duties test and salary basis for exemption under Part 541 defeat an otherwise valid exemption?

Response:

Additional compensation besides the required minimum weekly salary guarantee may be paid to exempt employees for hours worked beyond their standard workweek without affecting the salary basis of pay. Thus, extra compensation may be paid for overtime to an exempt employee on any basis. The overtime payment need not be at time and one-half, but may be straight time, or at one-half time, or flat sum, or on any other basis.

Department of Labor Field Operations Handbook

This reference clearly allows the use of either overtime or compensatory time for exempt employees:

Extra Compensation Paid for Overtime

Extra compensation may be paid for overtime to an exempt employee on any basis. The overtime payment need not be at time and one-half, but may be straight time, or flat sum, or on any other basis. Section 22b01.

This appears to be based on the 1995 administrative letter rulings cited above.

Court Rulings

Court rulings on the question of additional compensation effecting exempt status are split. The 4th Circuit has explicitly found that employees exempt under the act (FLSA) may be paid overtime (on whatever basis) for hours worked beyond their regular schedule. No federal court has unequivocally condemned such practices. One Federal District court has expressly approved straight-time overtime, but another has suggested that hourly overtime would invalidate the exemption. None of these court rulings have addressed the administrative letter rulings by the Department of Labor or the potential good faith reliance defense thereon.

Review of the relevant case law indicates that regular and consistent payment of overtime or compensatory time, in conjunction with normal and regular duties and assignments, may defeat salaried status. If the extra hours are usual and/or regularly anticipated, additional compensation for such extra hours is not considered generally consistent with salaried status. These characteristics contrast sharply with the reference in the regulations to "occasional or



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sporadic” instances of special part-time or temporary public employment, which are exceptions from even normal (i.e., non-exempt) overtime payment if the work is undertaken at the sole option of the employee. The point is noted because state fire resource mobilizations are clearly “occasional and sporadic” as defined by the Department of Labor.

Decision Summary

Department of Labor regulation specifically permits additional compensation besides salary for exempt employees.

State fire resource mobilization is an infrequent event, only implemented in the event of a major emergency situation requiring resources beyond those available locally or by virtue of mutual aid. Court questions on the effect of additional compensation payments to exempt status center on regular and consistent local practices.

Extra compensation for exempt status personnel, granted for response to major emergency incidents that are infrequent and unusual, is allowable, and such extra compensation will not defeat salaried status.

Implementation Procedure

Local fire protection jurisdictions that have concluded that extra compensation is allowable for their exempt personnel responding to state fire resource mobilizations have generally enacted a policy prescribing the principles for granting such extra compensation and, in some instances, incorporated provisions for it within their staff salary and benefit program. Such policies and procedures are encouraged because they can incorporate the legal foundations for them and prescribe the principles for allowing such payments.

Examples of policies and procedures are found in **Appendix M**.



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2005 Mobilization Plan

In the event of a state mobilization of fire resources for any reason, responding fire personnel must remember that the minimum state mobilization time commitment is 72 hours (three days) and at least the first day (24 hours) should be viewed as one without logistical support provided at the incident.

The minimum equipment and supply inventory for a state mobilization response will depend on the nature of the incident, the task assignment, and the duration of the incident. Most of the recommended inventory is common and can be prepackaged and ready for quick response. A backpack is recommended for use as an easy to transport, 24-hour survival kit in the event that crews are immediately deployed without the benefit of setup time in base camp. All other items should be placed in a durable duffle bag; suitcases are not recommended.

**Recommended Minimum Items for Wildfire / Interface Operations
NWCG Fireline Handbook (NFES 0065)**

- Generally, the total weight limit per individual is 55 pounds (35 pounds for personal equipment and 20 pounds for web gear or briefcase)
- Tags or markings are recommended for identifying personal gear
- External frame packs should not be used due to their bulk
- Personal protective equipment required:
 - Wildfire: Fire shelter, flame-resistant clothing, hardhat (with chinstrap and headlight clips)
 - Interface Operations: In addition to wildfire equipment above, complete structural personal protective equipment
- Small backpack and other web gear for working on the fireline
- Work gloves
- Leather boots (lace-up, heavy duty)
- Socks (heavy duty)
- Jackets: One heavy, one light, of cotton, wool, or flame-resistant material
- Agency-approved fire shirts and trousers
- Underclothes (non-synthetic fabric)
- Handkerchiefs
- Personal toilet gear
- Watch
- Optional: Sunglasses, writing paper, envelopes, and stamps

Cameras are not recommended for fireline personnel.



Appendix K Recommended Travel Kit

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General Recommendations for Personal Travel Kit

- Clothing:
 - Underwear (two sets)
 - Outerwear (one set)
 - Socks
 - Jackets
- Optional:
 - Rain gear
 - Hat
 - Sweatshirt or sweater
- Protective Clothing:
 - Required personal protective equipment
 - Accountability tags
- Personal Hygiene Supplies:
 - Toilet kit
 - Towel
 - Lip balm
 - Lotion
 - Sunscreen
- Sleeping bag
- Miscellaneous:
 - Medical Information Card
 - Red Card (or other certified training record)
 - Sunglasses
 - Watch
 - Pocket knife

Team Supply

- Toilet paper, tissues, paper towels, garbage bags
- Flares
- Binoculars
- Batteries (flashlight and radio), battery charger
- Water (bottled)
- Food (72 hours)

Strike Team / Task Force Leader

- ICS Forms: 211 (Check-In), 214 (Unit Log), 224 (Crew Performance)
- Mobilization Manifest Form
- NWCG Fireline Handbook (all incidents)
- *Washington State Fire Services Resource Mobilization Plan*
- Washington State Fire Service Directory
- Hazardous Materials Guidebook
- Accident report forms
- Legal pads, pens, clipboard
- Map(s)
- Cellular telephone
- Forms to be completed prior to departure:
 - Mobilization Manifest Form
 - ICS 211, Incident Check-in List
 - Apparatus Inventory
 - Crew Lists (name, SSN, emergency contact)

Fire Defense Region

- Identify in-region Communications resources
 - Radio systems (fire/law VHF and UHF)
 - Mobile command posts
 - Radio cache
- Identify in-region Communications Unit personnel
 - Fire dispatch personnel available for state mobilization
 - Communications Unit leaders
 - Radio technicians
- Establish training for personnel to ensure their preparation to function in their specified roles.
- Identify radio frequencies utilized within the region, and prepare a plan for their coordinated utilization in support of major operations.



Appendix L Communications

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